

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HARTFORD CASUALTY INSURANCE
COMPANY,

Plaintiff,

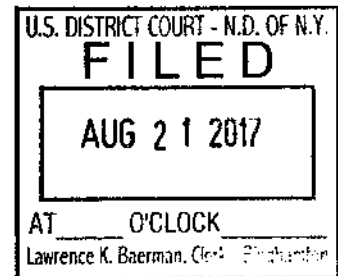
vs.

EASTERN BUILDING & RESTORATION,
INC., MICHAEL R. MARTIN, CYNTHIA
MARTIN, PANE REPIC AND ANNABEL
PIERCE,

Defendants.

Civil Action No.: 1:16-cv-00760-
TJM-CFH

CONSENT JUDGMENT



WHEREAS, in order to enter into and perform various construction contracts, Defendant Eastern Building & Restoration, Inc. ("Eastern") was required by law to arrange for the issuance by a surety company of performance and payment bonds; and

WHEREAS, Eastern requested that Plaintiff Hartford Casualty Insurance Company ("Hartford") issue performance and payment bonds on its behalf; and

WHEREAS, on or about May 22, 2008, as a condition precedent to the issuance by Hartford of any such bonds, Defendants Eastern, Michael R. Martin, Cynthia Martin, Pane Repic and Annabel Pierce (collectively "Defendants" or "Indemnitors") executed a written General Indemnity Agreement ("GIA"); and

WHEREAS, the GIA, *inter alia*, provided that the Defendants, jointly and severally, would indemnify, exonerate and hold Hartford harmless from all loss, liability, damages, and expenses including, but not limited to, court costs, interest, attorneys' fees, professional fees and consulting fees, which Hartford incurs or sustains (1) because of having furnished any Bond to Eastern (2) because of the failure of an Indemnitor to discharge any obligations under this

Agreement, (3) in enforcing any of the provisions of this Agreement, (4) in pursuing the collection of any loss incurred hereunder, or (5) in the investigation of any claim submitted under any Bond; and

WHEREAS, at the specific request of some or all of the Indemnitors and in reliance upon the GIA, Hartford issued or procured the issuance of Payment and Performance Bonds numbered 01 BCS FK 5826 on behalf of Eastern, as principal, in connection with a construction contract entered into by and between Eastern and the Cohoes City School District in the amount of \$10,742,423 entitled "Contract No. 9 General Construction Phase IIIA-Cohoes High School and Harmony Hill Elementary School Cohoes City School District, District Wide Additions & Alterations 7 Bevan St., Cohoes NY SED Control Numbers: Cohoes High School: 01-05-00-01-0-006-018 Harmony Hill Elementary School: 01-05-00-01-0-010-008" (hereinafter "Cohoes Project"); and

WHEREAS, at the specific request of some or all of the Indemnitors and in reliance upon the GIA, Hartford also issued a Labor and Material Bond on behalf of Eastern, Bond No. 01BCSFK5842 as Principal, in connection with a construction contract entered into by and between Eastern and the Office of General Services for \$3,985.250, entitled "Plaza Level Masonry Repairs, GNARESP, Albany, New York, Project No. 44036C dated April 7, 2010 and Addendum No. 1 dated May 13, 2010" (hereinafter "Plaza Project"); and

WHEREAS, after the issuance of the aforesaid Bonds, Hartford received numerous claims in connection with the Cohoes Project and the Plaza Project; and.

WHEREAS, upon review of these claims, Hartford has paid \$149,671.78 to settle claims related to the Cohoes Project and the Plaza Project; and

WHEREAS, through July 2017, Hartford has incurred attorneys' fees and costs totaling \$14,048.41 in connection with enforcing Hartford's rights under the GIA; and

WHEREAS, Hartford previously settled with the defendants, Pane Repic and Annabel Pierce in the amount of \$75,000; and

WHEREAS, Hartford has entered into a Stipulation of Settlement with Prejudice with Defendant Cynthia Martin whereby Ms. Martin has agreed to pay Hartford in the amount of \$7,000; and

WHEREAS, the remaining defendants to this action, Eastern Building & Restoration, Inc., Michael R. Martin now wish to settle this matter by consenting to a Judgment.

IT IS on this 21st **day of** August, 2017

ORDERED AS FOLLOWS:

1. Final Judgment is hereby entered in favor of Plaintiff Hartford Casualty Insurance Company and against Defendants Eastern Building & Restoration, Inc. and Michael R. Martin in the amount of \$67,671.78 plus interest from March 7, 2014 and attorney's fees in the amount of \$14,048.41 through July 2017 and costs.
2. The Northern District of New York retains jurisdiction over the subject matter of this action.
3. This Consent Judgment as approved by the Court shall apply to and be binding on all parties and on the successors and assignees of the parties and no change in ownership or status shall in any way alter the responsibilities of Eastern under this Consent Judgment.
4. Said Judgment may be amended at any time to include any and all reasonable attorneys' fees and costs incurred by Defendants' counsel in connection with negotiation of the Consent Judgment and the finalizing, enforcement and filing thereof since March 2017 by

submitting an affidavit of services, which must be submitted to the Court upon notice to defendants; and

5. This Consent Judgment constitutes a final and appealable order. The order for Judgment and Judgment may be entered without further notice.

6. No party hereto is an infant or incompetent.

7. This undersigned hereby consent to the form and entry of this Consent Judgment.

Eastern Building & Restoration, Inc.

By:

Michael Martin
Michael R. Martin

Dated:

Michael Martin
Michael R. Martin, individually

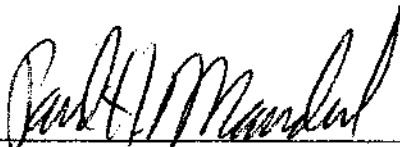
Dated: 8/16/17

Hartford Casualty Insurance Company

By:

Chris J. McElroy
Christopher McElroy

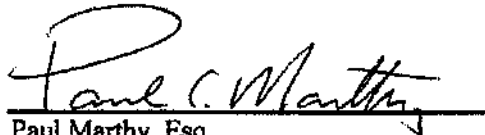
Dated: 8/17/17



Paul H. Mandal, Esq.
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26 Columbia Turnpike
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Florham Park, NJ 07932
*Attorneys for Plaintiff, Hartford Casualty
Insurance Company*

Dated:

8/17/17



Paul Marthy, Esq.
The Breakell Law Firm P.C.
10 Airline Drive, Suite 205
Albany, NY 12205
*Attorneys for Defendants, Eastern
Building & Restoration, Inc., Michael R.
Martin, and Cynthia Martin.*

Dated:

8/17/17

SO ORDERED:

8/21/17



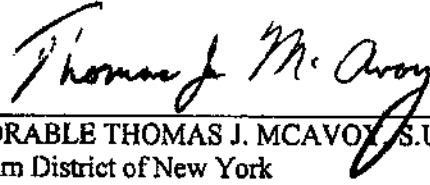
HONORABLE THOMAS J. MCAVOY, S.U.S.D.J.
Northern District of New York

ORDER FOR JUDGMENT

The court approves the terms of the foregoing Consent Judgment in Hartford Casualty Insurance Company v. Eastern Building & Restoration, Inc., et. als. Civ-action-no.:1:16-cv-00760. This is a final order that disposes of the entire matter in litigation between Hartford and Eastern Building & Restoration, Inc., Michael R. Martin.

Dated this 21st day of August 2017

BY THE COURT:


HONORABLE THOMAS J. MCAVOY, S.U.S.D.J.
Northern District of New York